

AFTER RECORDING RETURN TO:
CITY OF NEWPORT
169 SW COAST HIGHWAY
NEWPORT, OR 97365

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

1. PARTIES:

Name: Patrick J Kelley,
Address: 104 NW Franklin Bend, OR 97701, hereinafter referred to as "Grantor".

CITY OF NEWPORT, an Oregon Municipal Corporation, 169 SW Coast Highway, Newport, Oregon, 97365, hereinafter referred to as "Grantee".

2. AFFECTED PROPERTY:

Grantor is currently the owner of the following described real property (property) located in Lincoln County, Oregon at:

Tax Lot 15900, Located at 121 NW Gilbert Way Newport, Oregon 97365

3. GRANT OF EASEMENT:

Grantor does hereby grant unto the Grantee, its successors and assigns, and Grantee hereby accepts, a Temporary Construction Easement upon a portion of Grantor's property as shown in the map attached as EXHIBIT "A" incorporated herein.

4. STATEMENT OF PURPOSE:

The easement described above shall be used to remove 10 trees from the property supporting the adjacent restroom and shower improvements and for unrestricted ingress and egress to Grantor's property for the purpose of removing the trees. The work on the subject property will include removal, limbing, and bucking of the trees into approximately 15-inch-long 'rounds' to be removed by the Grantor. All brush and debris associated with the tree removal will be removed by the Contractor.

5. TYPE OF EASEMENT:

Remove Stumps & Return Land to Original State

The easement described above shall be non-exclusive except that Grantee shall have the exclusive right to remove the trees from within the easement. Grantor may use the surface of the easement provided such use does not interfere with Grantee's rights contained in this easement. Grantor shall not permit any other use or utilities to be located in the easement without the written consent of Grantee. Approved uses within the easement area shall consist of, but are not limited to, paved driveway or parking areas, trails, paths, or other uses that will not affect the ability of the City to access the construction areas. Prohibited uses shall consist of, but are not limited to, buildings, structures, or any excavation or alteration of the earth slope. ~~The easement shall perpetually encumber the property.~~

6. MAINTENANCE:

Grantee shall be responsible for the maintenance of the temporary construction site within the easement. Grantor shall be responsible for landscape and surface maintenance within the easement. Grantee's use of the easement shall not unreasonably interfere with Grantor's use of its property.

7. INDEMNIFICATION:

The Grantee does hereby agree to defend, hold harmless, and indemnify Grantor, its successors and assigns, from any claim of liability or any other claim involving the slope, or arising out of the Grantee's use of the easement described above, unless caused by Grantor's negligent or willful conduct or Grantor's failure to fulfill its maintenance obligations as set forth in Paragraph 6 above.

8. REMEDIES:

In addition to all other remedies allowed by law, the parties, their successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this agreement.

9. BINDING EFFECT ON SUCCESSOR INTERESTS:

The terms, conditions and provisions of this agreement shall extend to, be binding upon and inure to the benefit of the heirs, personal representatives and assigns of the parties.

10. ATTORNEY FEE:

In case suit or action is instituted in connection with this agreement, the prevailing party shall be entitled to recover from the losing party such sums as the court may adjudge reasonable as attorney fees and costs in such suit or action, or upon appeal.

DATED this 7th day of June, 2016.

~~GRANTOR:~~

[illegible]

STATE OF Oregon)
) ss.
County of Lincoln)

GRANTEE:1

By:

Spencer Nebel, City Manager
CITY OF NEWPORT

Personally appeared before me this 7th day of June, 2016,

_____, _____ for _____, and
acknowledged the foregoing instrument to be his/her and _____'s voluntary
act and deed.



By:

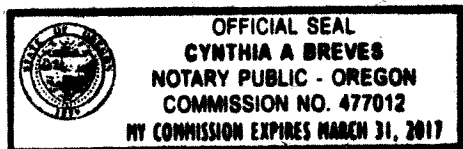
Notary Public for: State of Oregon
My Commission expires: 6/23/2017

STATE OF OREGON)
) ss.
County of Lincoln)

Personally appeared before me this 8 day of June, 2016,

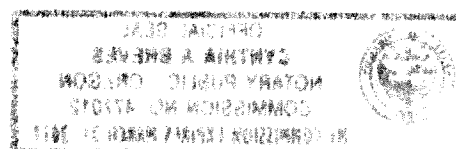
, City Manager for the CITY OF NEWPORT and acknowledged the

foregoing instrument to be his/her and the CITY OF NEWPORT's voluntary act and deed, and accepted the easement on behalf of the CITY OF NEWPORT.

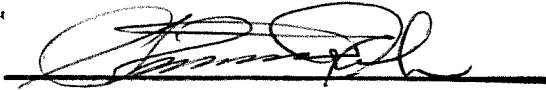


By:

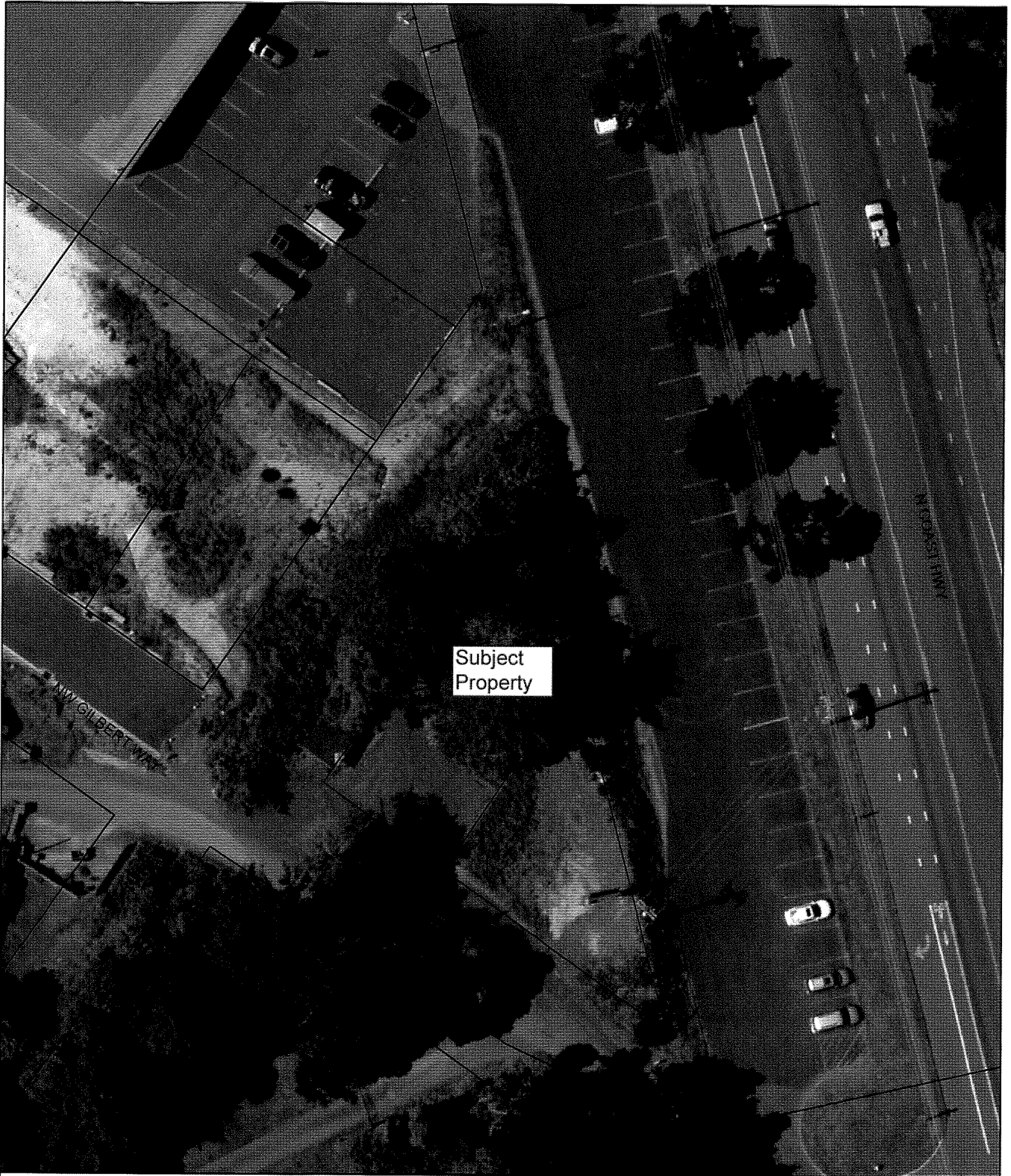
Notary Public for Oregon
My Commission Expires: 3/31/2017



Approved as to Form

A handwritten signature in black ink, appearing to be "James H. Smith", is written over a solid horizontal line.

City Attorney



**City of Newport
Engineering Department**

169 SW Coast Highway
Newport, OR 97365

Phone: 541-574-3366

Patrick J Kelley TCE 121 NW Gilbert Way

Exhibit A



This map is for informational use only and is not suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its use and users of this map are cautioned to verify all information with the City of Newport Engineering Department.

0 40 80 Feet